Exxon Shipping Company *and* Exxon Seamen's Union. Case 22–CA–15637

September 30, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On December 27, 1991, the United States Court of Appeals for the Third Circuit remanded this case to the National Labor Relations Board with directions to solicit comments from the Department of Transportation ''concerning the interpretation of statutory provisions governing allotments from seamen's wages.''[1] The Board had found that the Respondent, Exxon Shipping Company, had violated Section 8(a)(3) and (1) of the National Labor Relations Act by discriminatorily refusing to process employees' draw check orders made payable to the Union for monthly union dues, and had violated Section 8(a)(5) and (1) of the Act by imposing new restrictions on the use of the draw check order system without bargaining with the Union.[2]

In the underlying proceeding, the Board found that the Respondent had failed to meet its burden of showing that, apart from union considerations, it would have refused to process the draw check order forms that did not meet the requirements of 46 U.S.C. § 10315. The Board further found that the Respondent, which is engaged, inter alia, in the coastwise shipping of petroleum products, had failed to prove that Section 10315 was applicable to coastwise voyages. Finally, the Board found that, even assuming the statutory provisions were applicable to coastwise shipping, the draw check orders at issue here were not prohibited by the maritime statutes.

On appeal to the Court of Appeals for the Third Circuit, the Respondent relied for the first time on an internal Coast Guard memorandum dated February 18, 1989, which stated that a separate provision of the maritime statute, 46 U.S.C. § 10502(c), prohibited the allotment of wages for coastwise shipping.[3] The Respondent further attached to its reply brief to the court a letter from the Coast Guard dated June 13, 1991, which reiterated the Coast Guard's position that the maritime laws prohibited the allotment of wages for seamen sailing on coastwise articles.[4]

The court remanded this case to the Board with instructions to solicit the Department of Transportation's views on the applicable shipping statutes. Pursuant to this direction, the Board queried the Department (1) whether it is a violation of 46 U.S.C. § 10502(c) or other maritime statutes to permit allotments for seamen sailing on coastwise articles; (2) whether draw check orders are within the definition of allotments; and (3) how the provisions regulating allotments are enforced?

On April 27, 1992, the Board received a reply from the Department of Transportation, through the office of the Commandant of the U.S. Coast Guard, dated April 22, 1992. The Coast Guard informed the Board that, in March 1989, it had corresponded with a representative of the General Counsel regarding the interpretation of 46 U.S.C. § 10502(c). In that March 9, 1989 correspondence with the Board's Regional Office in Newark, New Jersey, the Coast Guard informed the General Counsel that its review of the legislative history of the maritime statute warranted the conclusion that Congress intended to prohibit allotments for seamen sailing on coastwise articles under 46 U.S.C. § 10502(c). The Coast Guard attached the February 18, 1989 internal memorandum and the March 9, 1989 correspondence with the General Counsel to its April 22, 1992 letter.

The Coast Guard expressed the view that if Congress had intended to permit an assignment of seamen's wages as payment of union dues, it would have made an explicit provision in the statute which is precise in limiting the allocation of wages. The Coast Guard noted that although the term ''allotment'' is not defined by statute, it appears intended to include any deduction from seamen wages which are assigned by the seamen for payment by the employer. The Coast Guard observed that a ''draw check order,'' as defined in the Board's Decision and Order is a ''system by which employees could direct that a portion of their wages be sent to a bank or a specified name and address.'' This description of a draw check order clearly falls within the general dictionary meaning of the statutory term, ''allotment,'' i.e., a portion set aside for a special use or purpose.

The Coast Guard further observed that 46 U.S.C. § 10502(c) explicitly provides that the shipping articles agreement for coastwise voyages ''may not contain a provision on the allotment of wages.''[5] It found that the shipping articles agreement encompasses the employment contract signed by the seamen and any applicable collective-bargaining agreement. The Coast Guard opined that if allotments were permitted outside the framework of this written agreement, the statutory restrictions would be easily circumvented and become largely meaningless. Accordingly, the Coast Guard in-

[1] *Exxon Shipping Co. v. NLRB*, Docket Nos. 91–3230 and 91–3283 (unpublished judgment).

[2] 302 NLRB 290 (1991). Member Raudabaugh did not participate in this case.

[3] Brief for Petitioner to the Court of Appeals for the Third Circuit, Addendum, pp. 12–14.

[4] Respondent's reply brief to the Court of Appeals for the Third Circuit, Exh. 1.

[5] The Coast Guard—somewhat ambiguously given the context of this case—stated that the terms in such agreements are largely considered to be matters best discussed and resolved during labor management negotiations. Finally, the Coast Guard stated that it does not have a program to actively review the content of these documents.

terpreted 46 U.S.C. § 10502(c) to prohibit allotments for seamen sailing on coastwise articles.

After receipt of the Coast Guard's views, the Board invited the parties to submit statements of position. The General Counsel argues that the Board properly ordered the Respondent to remedy its 8(a)(1), (3), and (5) violations by making draw check orders available to pay union dues because the orders, which seamen could revoke at will, were not prohibited ''allotments'' under maritime law. The General Counsel contends that the Coast Guard has failed to adequately address the ultimate issue of whether the definition of the legal term ''allotments'' encompasses the draw check orders used by the Respondent.

The General Counsel argues that the Coast Guard's opinion, devoid of any case authority, merely relies on a general dictionary meaning of the term ''allotment'' and fails to reconcile that meaning with the Federal court's application of the term in *Skandalis v. M/V Galini*, 1974 A.M.C. 1671 (E.D. Va. 1974), relied on by the Board to conclude that the draw check orders were not unlawful allotments under maritime law. 302 NLRB 290 at 292. The Board noted that the *Skandalis* court considered the purpose of the allotment provisions, to protect the seaman from his folly, and determined that the limitation on allotments refers only to deductions which are ''an irrevocable assignment of future wages.'' Id. The General Counsel argues that the Board properly applied this reasoning to the instant case and determined that the draw check orders were not irrevocable assignments of future wages and, thus, not forbidden under the maritime statute. Id.

The General Counsel further argues that although the Board was considering the term ''allotment'' under 46 U.S.C. § 10315, the statutory provision relied on by the Respondent at the time, the same analysis holds under 46 U.S.C. § 10502(c) because both statutory provisions are concerned with limiting allotments from seamen's wages and neither statutory provision defines ''allotment.'' The General Counsel concludes that the Board must adhere to its original Decision and Order and rely on reasoned judicial authority rather than a statement of position from a Federal agency that admittedly does not exercise its enforcement authority over the content of these shipping articles.[6]

The Respondent's statement of position contends that the Coast Guard's opinion, that seamen draw check orders for payment of union dues are prohibited allotments under Federal maritime law, precludes finding a violation of Section 8(a)(1), (3), and (5) of the Act. The Respondent argues that the Board may not substitute its views for those of Congress as explicated by the Coast Guard, or ''make it impossible for a regulated entity to conform its behavior to both [the Coast Guard and NLRB] regimes.'' *New York Shipping Assn. v. Federal Maritime Commission*, 854 F.2d 1338, 1371 (D.C. Cir. 1988), cert. denied 488 U.S. 1041 (1989); see also *Southern Steamship Co. v. NLRB*, 316 U.S. 31, 47 (1942). The Respondent requests that the Board vacate its earlier Order and dismiss the complaint based on the Coast Guard memoranda.

Having reconsidered our original Decision and Order in light of the court's remand, the Coast Guard's interpretation of the statutory provisions governing allotments from seamen's wages, and the parties' statements of position, we have decided to reverse our original Decision and Order and dismiss the complaint. In doing so, we give substantial weight to the interpretation of the Coast Guard.

The Coast Guard has concluded that 46 U.S.C. § 10502(c) prohibits allotments for seamen sailing on coastwise articles, that a draw check order is a form of allotment, and that the allotment statute remains effective notwithstanding the abolition of shipping commissioners to enforce it. In giving substantial weight to this interpretation of maritime law received from the Coast Guard, we are in accord with prior cases finding that employment in this industry is uniquely subject to pervasive regulation by Federal maritime statutes, and that the Act often must be accommodated to those statutes. See, e.g., *Southern Steamship Co. v. NLRB*, 316 U.S. 31 (1942) (strike on ship at dock in violation of maritime law unlawful, notwithstanding protections otherwise afforded by NLRA); *U.S. Bulk Carriers v. Arguelles*, 400 U.S. 351 (1971) (employer not entitled to compel arbitration of seaman's wage claim pursuant to collective-bargaining agreement in light of provisions of Federal maritime law granting seamen right to bring such actions in court). Thus, reaffirming our original decision ordering the Respondent not to discriminate in its processing of draw check orders nor to change those procedures unilaterally would require the Respondent to violate the Coast Guard's interpretation of 46 U.S.C. § 10502(c) and be contrary to our acceptance of the remand.

[6] The General Counsel does not contend that the Coast Guard has deferred its application of the statute to the parties in a collective-bargaining context. See fn. 5, above.

In all these circumstances, we find that the Respondent was permitted to adopt a rule that complied with Federal maritime law. Accordingly, we find no violation of the Act. Cf. *Murphy Oil USA*, 286 NLRB 1039, 1042 (1987); *Standard Candy Co.*, 147 NLRB 1070, 1073 (1964).

ORDER

The complaint is dismissed.